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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82445; File No. SR-Phlx-2017-99]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Order Granting Accelerated Approval of a Proposed Rule Change to Amend Rule 1059 to Make Permanent a Program that Allows Cabinet Trade Transactions to Take Place at a Price Below \$1 Per Option Contract

January 5, 2018.

I. Introduction

On November 29, 2017, Nasdaq PHLX LLC (the “Exchange” or “Phlx”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change amending the Exchange’s rules to make permanent a program that allows transactions to take place in open outcry trading at prices of at least \$0 but less than \$1 per option contract (“sub-dollar cabinet trades”). The proposed rule change was published for comment in the Federal Register on December 14, 2017.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposed Rule Change

Prior to 2010, Phlx Rule 1059 (Accommodation Transactions) allowed cabinet trade transactions at a price of \$1 per option contract to occur in open outcry trading for certain

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 82245 (Dec. 8, 2017), 82 FR 58825 (Dec. 14, 2017) (SR-Phlx-2017-99) (“Notice”).

options classes.⁴ In 2010, the Exchange amended Phlx Rule 1059 on a pilot basis to allow sub-dollar cabinet trades to take place at prices of at least \$0 but less than \$1 per option contract.⁵ The Exchange now proposes to amend Phlx Rule 1059 to make permanent its sub-dollar cabinet trade pilot program, which currently is scheduled to expire on January 5, 2018.⁶

The Exchange permits sub-dollar cabinet trade transactions to be traded pursuant to the same procedures applicable to \$1 cabinet trades, except that for sub-dollar cabinet trades (i) bids and offers for opening transactions are permitted only to accommodate closing transactions, and (ii) transactions in option classes participating in the Penny Pilot Program are permitted.⁷ The Exchange believes that “allowing a price of at least \$0 but less than \$1 better accommodates the closing of options positions in series that are worthless or not actively traded, particularly when there has been a significant move in the price of the underlying security, resulting in a large number of series being out-of-the-money.”⁸

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act⁹ and the rules and regulations thereunder applicable to a

⁴ See Phlx Rule 1059.

⁵ See Securities Exchange Act Release No. 63626 (Dec. 30, 2010), 76 FR 812 (Jan. 6, 2011) (SR-Phlx-2010-185).

⁶ See Commentary .02 to Phlx Rule 1059. See also Securities Exchange Act Release No. 79782 (January 12, 2017), 82 FR 6667 (January 19, 2017) (SR-Phlx-2017-01).

⁷ See Commentary .02 to Phlx Rule 1059.

⁸ Notice, supra note 3, at 58826. The Exchange notes that this is especially true for transactions in options classes in the Penny Pilot Program, for which cabinet trades are not otherwise permitted. See id.

⁹ 15 U.S.C. 78f.

national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In the Notice, the Exchange explains that it initially adopted the sub-dollar cabinet trade rule on a pilot basis to “evaluate the efficacy of the change and to address any operational issues that might arise in processing [c]abinet trades.”¹² The Exchange represents that at the time it adopted the pilot, its system permitted reporting cabinet trades at prices as small as \$0.0001, as it does today.¹³ Based on its experience with these types of trades, the Exchange represents that its system “allows [c]abinet trades to be processed in a manner similar to how all other trades are processed by the [E]xchange.”¹⁴

In support of making the pilot program permanent, the Exchange represents that “there are no operational issues in processing and clearing [c]abinet [t]rades in penny and sub-penny

¹⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

¹² See Notice, supra note 3, at 58826.

¹³ See id.

¹⁴ Id. See also id. at 58826 (noting that “in 2016, there were a total of 442 [c]abinet [t]rades” on the Exchange “comprising 244,734 contracts,” and “[e]ach contract was executed at a price of \$0.01.”).

increments.”¹⁵ The Exchange also represents that “members and member organizations have not raised any concerns with the processing of [c]abinet trades.”¹⁶ Finally, the Exchange represents that it is “not aware of the Options Clearing Corporation (“OCC”) having operational issues with processing [c]abinet trades submitted by the Exchange.”¹⁷

Based on the representations of the Exchange, the Commission believes that permanent approval of the sub-dollar cabinet trade pilot is consistent with the Act. In particular, the Commission notes that the Exchange’s system allows it to process cabinet trades in the normal course. Further, the Exchange has not observed any issues or concerns with sub-dollar cabinet trades at the Exchange level, with and among its members, or in processing the trades through OCC. Accordingly, the Exchange’s rule appears reasonably designed to remove impediments, prevent fraudulent and manipulative acts and practices, and foster cooperation and coordination with persons engaged in facilitating transactions in securities. Further, permanent approval will continue to provide investors with choice when considering a cabinet trade, including the ability to price such trades below \$1 per contract.

IV. Accelerated Approval of Proposed Rule Changes

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁸ to approve the proposed rule changes prior to the 30th day after the date of publication of the Notice in the Federal Register.¹⁹ The Commission believes that the proposed rule change does not raise novel regulatory issues. The Commission notes that earlier this year it approved similar proposed rule changes from

¹⁵ See Notice, supra note 3, at 58826.

¹⁶ Id.

¹⁷ Id.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ As noted above, the Notice was published for comment in the Federal Register on December 14, 2017 and the comment period closed on December 29, 2017. Accordingly, the 30th day after publication of the Notice is January 13, 2018.

NYSE Arca, Inc.²⁰ and NYSE American LLC (formerly known as NYSE MKT LLC)²¹ making permanent sub-dollar cabinet trade pilot programs. The Exchange has represented that its system is able to process cabinet trades similar to the processing of its other trades, it has not experienced any issues processing cabinet trades at the Exchange or through OCC, and its members have not expressed concerns. In addition, the Commission did not receive any comments on the proposed changes. Accordingly, the Commission finds that good cause exists to approve the proposed rule changes on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-Phlx-2017-99) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Eduardo A. Aleman,

Assistant Secretary.

²⁰ See Securities Exchange Act Release No. 80615 (May 5, 2017), 82 FR 22036 (May 11, 2017) (SR-NYSEArca-2017-24).

²¹ See Securities Exchange Act Release No. 80616 (May 5, 2017), 82 FR 22033 (May 11, 2017) (SR-NYSEMKT-2017-13).

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).

